Statement for the Record

Of

Dave Koenig, Vice President, Tax and Profitability,
National Restaurant Association

For The Hearing On

"Framework for Evaluating Certain Expiring Tax Provisions"

Before

Subcommittee on Select Revenue Measures
Committee on Ways and Means
U.S. House of Representatives

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Chairman Tiberi, Ranking Member Neal, and members of the House Ways and Means Select Revenue Measures Subcommittee, thank you for the opportunity to submit this statement for the record on behalf of the National Restaurant Association.

We applaud the Chairman, Ranking Member, and Subcommittee's consideration of tax extenders. The Subcommittee's June 8th hearing to explore principles and metrics to evaluate tax extenders importantly advanced the dialogue on these tax policies. The witnesses discussed possible frameworks to assess tax extenders, many of which shared key criteria. Key criteria included: the rationale for the tax policy; revenue and efficiency; and, the reason for the temporary nature of the tax policy and its appropriate duration.

This statement focuses on three expired provisions of significance to the restaurant industry: the 15-year depreciation schedule for leasehold improvements, restaurant improvements and new construction, and retail improvements; the Work Opportunity Tax Credit ("WOTC"); and the deduction for donations of food inventory. Evaluating these tax provisions against the key criteria discussed at the June 8th hearing demonstrates that these important policies should be made permanent.

Looking ahead, tax reform presents an opportunity to provide taxpayers with certainty, simplicity, and fairness, while encouraging economic growth and job creation. Done properly, a comprehensive review of the tax system, including tax extenders, would eliminate those tax policies that detract from these objectives, while promoting those that advance them. However, in the interim, we urge immediate and seamless extension of the 15-year depreciation schedule, WOTC, and the charitable deduction for donations of food inventory.

Restaurants: Small Businesses with a Large Impact on Our Nation's Economy

The restaurant industry plays a significant role in our nation's economy. In 2012, the restaurant industry is expected to generate an estimated $632 billion in sales, with an overall economic impact of more than $1.7 trillion. Every dollar spent in restaurants generates an additional $2.05 spent in our nation's economy. The restaurant industry is one of the nation's largest private job creators, employing approximately 12.9 million people, representing nearly ten percent of the U.S. workforce. We are truly the cornerstone of this nation's economy.

Moreover, it is important to stress that the restaurant industry is an industry of small businesses. There are 970,000 restaurant and foodservice outlets in this country. Seven out of ten restaurants are single-unit operators. Most eating and drinking establishments, 93 percent of the industry, have fewer than 50 employees. Restaurants also serve as the conference rooms for many of the self-employed and other small businesses.

15-year Depreciation Schedule for Leasehold Improvements, Restaurant Improvements and New Construction, and Retail Improvements

Rationale for Tax Policy

During the June 8th hearing, witnesses discussed the need to understand the rationale behind a tax provision. In particular, witnesses recommended considering whether a tax provision addresses a compelling need for government intervention and whether a tax provision reflects sound tax policy.

One principle of the tax code is that costs of assets are allocated over the period in which they are used. Assets with longer expected lives are depreciated over a longer period of time, while assets with shorter lives are depreciated over a shorter period of time. As a reflection of this principle, Congress permanently provided for the 15-year depreciation schedule for retail motor fuels outlet stores in 1996. Congress subsequently expanded property subject to the 15-year depreciation schedule to include leasehold improvements, restaurant improvements and new construction, and retail improvements.

With more than 130 million Americans patronizing restaurants each day, restaurant building structures experience daily structural and cosmetic wear and tear caused by customers and employees. National Restaurant Association research shows that, as a result, most restaurants remodel and update their building structures every six to eight years. Consequently, 15 years is a more accurate timeframe for recovering the cost of investments in restaurant buildings and improvements.

Revenue and Efficiency
During the June 8th hearing, witnesses discussed the importance of evaluating a tax provision by its revenue effect and its efficiency, meaning whether the provision accomplishes its goals effectively.

JCT has estimated that an extension of the 15-year depreciation schedule would cost $3.399 billion over ten years. (JOINT COMMITTEE ON TAXATION, ESTIMATED BUDGET EFFECTS OF REVENUE PROVISIONS CONTAINED IN PRESIDENT'S FY 2012 BUDGET PROPOSAL, JCX-19-11 March 17, 2011).

The cost associated with the provision must be viewed in light of the effectiveness of the 15-year depreciation schedule. A 15-year depreciation schedule reduces the cost of capital expenditures and increases cash flow. As demonstrated in Figure 1 below, the annual tax savings and corresponding additional cash flow realized by restaurateurs from a 15-year, rather than a 39-year, depreciation schedule are considerable. According to a National Restaurant Association survey, between 2005 to the end of 2011, nearly two-thirds of restaurant operators benefitted from the 15-year depreciation schedule, either expanding or making improvements to their restaurants. Of these restaurant operators, 52 percent said that the expansions or improvements may not have been undertaken if the 15-year depreciation schedule was not in place.

Figure 1.
Sample Calculations for 15-Year versus 39-Year Depreciation

Total Capital Expenditure	Annual Depreciation (39-year)	Annual Tax Savings	Annual Depreciation (15-year)	Annual Tax Savings	Annual Difference in Tax Savings
$100,000	$2,532	$608	$6,667	$1,600	$992
$250,000	$6,329	$1,519	$16,667	$4,000	$2,481
$500,000	$12,658	$3,038	$33,333	$8,000	$4,962
$700,000	$17,722	$4,253	$46,667	$11,200	$6,947
$1,000,000	$25,316	$6,076	$66,667	$16,000	$9,924
$1,500,000	$37,975	$9,114	$100,000	$24,000	$14,886
$2,000,000	$50,633	$12,152	$133,333	$32,000	$19,848

Expenditure Scenarios
Rebuild Costs: Quickservice - $700,000; Fullservice - $1,500,000
Renovation Costs: Quickservice - $250,000; Fullservice - $500,000
Note: Figures are based on a 24 percent effective marginal tax rate

Additionally, when restaurants invest in construction and renovations, the impact spreads throughout the economy. Figure 2 provides state-by-state estimates of the additional spending on restaurant improvements and new construction that would result from an extension of the 15-year depreciation provision, as well as the overall economic and employment impact within each state.

Consequently, economic activity is sitting on the sidelines in a fragile economic recovery. Currently, 30 percent of restaurant operators said they have put projects on hold because of the uncertainty around the extension of the 15-year depreciation provision. With single-unit restaurant operators reporting an average expected project cost of $40,000, and multi-unit operators reporting an average expected project cost of $500,000, the additional construction activity of these restaurant projects alone would exceed $7 billion. Based on economic multipliers from the Bureau of Economic Analysis, the overall economic impact of these restaurant construction projects would exceed $23 billion, with a total employment impact of nearly 200,000 additional jobs across all U.S. industries.

Reason for Temporary Nature and Appropriate Duration

The 15-year depreciation schedule has been an integral part of the tax code for several years. However, it is temporary and must be extended annually. Most recently, the 15-year depreciation schedule was extended by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 and expired again on December 31, 2011. The piecemeal and temporary approach to the 15-year depreciation schedule, requiring extension every couple of years, presents taxpayers with unnecessary uncertainty and complexity.

The provision was not designed as a temporary measure, either as a stimulus provision or a provision requiring sunset review. The 15-year depreciation schedule was put in place to appropriately reflect the useful life of certain properties and to provide equity with the tax treatment of retail motor fuels outlet stores, both of which demonstrate the need for a permanent policy. However, the 15-year depreciation schedule's temporary extensions continue because it has been difficult to identify revenue sources to offset the cost of making the provision permanent.

The 15-year depreciation schedule is an effective and efficient tax policy that appropriately reflects economic reality and fosters economic and job growth. As part of tax reform, Congress should make permanent the 15-year depreciation provision. In this regard, we commend Congressman Gerlach and Congressman Neal for their introduction of H.R. 1265, broadly-supported, bipartisan legislation that would make permanent the 15-year depreciation schedule.

Work Opportunity Tax Credit

Rationale for Tax Policy

Another important, but largely expired, aspect of the tax code is WOTC, a tax credit provided to employers who hire individuals from several targeted groups who face significant barriers to employment. Examples of WOTC-targeted employee groups include veterans who either are food stamp recipients or are unemployed and suffering a service-connected disability, former felons, disconnected youth, and members of families receiving benefits under the Temporary Assistance for Needy Families Program ("TANF").

WOTC was enacted to address the critical issue of persistent unemployment among certain groups who face significant barriers to entering the workforce. The credit is provided to employers to help offset the additional costs associated with employing these worker populations. WOTC effectively lessens the impact of the productivity gap between the target group members and other workers, encouraging employers to take a chance and hire workers they may otherwise not. At the same time, the employee is given an opportunity to work, building skill sets and taking them off public assistance.

Revenue and Efficiency

JCT has estimated that a one-year extension of WOTC would cost $971 million over ten years. (JOINT COMMITTEE ON TAXATION, ESTIMATED BUDGET EFFECTS OF REVENUE PROVISIONS CONTAINED IN PRESIDENT'S FY 2012 BUDGET PROPOSAL, JCX-19-11 Mar. 17, 2011).

At a relatively low cost, WOTC works by effectively accomplishing its goal of ending persistent unemployment among our nation's most vulnerable citizens. The restaurant industry employs close to 13 million people, many of whom may not have been hired if WOTC had not been in place. Through WOTC, more long-term welfare recipients, a historically difficult group to employ, are being employed in the private sector and 7 out of 10 welfare recipients are using WOTC to find private sector jobs. A 2011 study by Peter Cappelli of the Wharton Business School at the University of Pennsylvania found that individuals hired under WOTC go on to become productive employees who are no longer dependent on public assistance.

In 2011, more that 1.1 million workers found jobs through WOTC, at an average cost of approximately $1,300 based on Joint Committee on Taxation data. It is important to note that this figure does not reflect any offsetting savings from lower welfare, disability, and social security payments.

Reason for Temporary Nature and Appropriate Duration

WOTC and its predecessors, the Targeted Jobs Tax Credit ("TJTC") and the Welfare to Work ("WTW") Tax Credit, have existed since 1977, except for a brief lapse in the 1990s. Since WOTC was established in 1996, it has been temporarily extended nearly a dozen times. WOTC has effectively been part of the tax code for three decades. The ongoing extensions of WOTC reflect that the tax policy effectively and efficiently addresses an important policy need. As part of tax reform, Congress should make WOTC permanent. Until then, WOTC should be extended retroactive to the beginning of 2012 and prospective as well.

Deduction for Charitable Donation of Food Inventory for Small Businesses

Rationale for Tax Policy

The deduction for charitable donation of food inventory is a critical tool in alleviating hunger. For nearly 30 years since its inception in 1976, the tax deduction for contributions of food inventory was limited to C corporations. In 2005, the provision was temporarily expanded to include pass-through entities (i.e., Subchapter S corporations, limited liability companies) and has been extended on subsequent occasions.

Without the provision, taxpayers get the same tax treatment for throwing out surplus food as they do for giving it to charity. The enhanced deduction instead encourages donating the food to charity, by helping to offset the costs associated with storing and transporting the extra food. Absent the enhanced deduction for the charitable donation of food inventory, these charities would be hard-pressed to meet critical demands, putting our nation's most vulnerable families at risk for hunger.

Revenue and Efficiency

JCT has estimated that a one-year extension of deduction for donations of food inventory would cost $138 million over ten years. (JOINT COMMITTEE ON TAXATION, ESTIMATED BUDGET EFFECTS OF REVENUE PROVISIONS CONTAINED IN PRESIDENT'S FY 2012 BUDGET PROPOSAL, JCX-19-11 Mar. 17, 2011).

With a small revenue impact, the deduction plays a critical role in feeding our nation's hungry. Each day, 35 million Americans are at risk of hunger. There has been a significant positive impact on food donations since the deduction's enactment in 2006. The deduction has resulted in a 137% increase in the amount of food donated by restaurants. This is food that prior to expansion of the food donation deduction was being landfilled.

America's restaurants give back to their communities in major ways, the most significant of which is through food donation. According to National Restaurant Association research, 73 percent of restaurants donate food to individuals or charities. The National Restaurant Association strongly encourages its members to donate more food and has partnered with Food Donation Connection ("FDC") to strengthen this effort. Founded by a former restaurant executive, FDC serves as the liaison between the restaurants interested in donating food and the social service agencies adept at getting that food to people in need. FDC helps restaurants develop and implement programs designed to provide an alternative to discarding surplus food, while capitalizing on the economic benefits of those donations through the tax savings. Since 1992, FDC has helped facilitate the donation of over 210 million pounds of food to non-profit, hunger-relief agencies.

Reason for Temporary Nature and Appropriate Duration

The deduction for donations of food inventory is yet another tax provision that, although temporary, addresses a permanent challenge of hunger. The deduction was put in place to address this challenge and provide equity with the tax treatment of such donations for C corporations.

Unfortunately, the uncertainty caused by the expiration of the food donation tax deduction extender has caused reductions in much needed food donations. The lapse of the food donation tax deduction extender is a significant impediment for small businesses that want to donate safe, nutritious food, rather than see it end up in landfill. Studies have estimated upwards of 70 billion pounds of recoverable food goes to waste each year. Making permanent the now-temporary component of the deduction would make it more effective, while advancing the objectives of providing taxpayers with simplicity and predictability.

Conclusion

Thank you for the opportunity to submit this statement on behalf of the National Restaurant Association. The tax extenders, including the 15-year depreciation schedule, WOTC, and the charitable deduction for donations of food inventory, must be reviewed and the June 8th hearing advanced the dialogue about possible ways to move forward. Tax reform would provide an opportunity to comprehensively review the tax extenders and other tax policies and consider permanent solutions. Until there is an opportunity for tax reform, we urge the immediate and seamless extension of the expired tax provisions. As Congress considers these important issues, we would be pleased to serve as a resource for the Subcommittee, the Committee, and Congress.

Figure 2

Estimated Impact of Extending 15-Year Restaurant Depreciation Provision Through 2013

State	Increase in Spending on Restaurant Improvements & New Construction (in millions)	Total Economic Impact Within the State (in millions)	Total Employment Impact Within the State (total jobs in all industries)
Alabama	$78	$170	1,591
Alaska	$21	$37	263
Arizona	$113	$233	1,913
Arkansas	$53	$104	961
California	$851	$1,953	13,122
Colorado	$130	$293	2,264
Connecticut	$101	$192	1,250
Delaware	$22	$41	269
District of Columbia	$26	$31	42
Florida	$380	$785	7,054
Georgia	$194	$441	3,818
Hawaii	$42	$80	609
Idaho	$40	$71	718
Illinois	$312	$728	4,870
Indiana	$134	$294	2,381
Iowa	$81	$144	1,293
Kansas	$60	$115	900
Kentucky	$75	$161	1,406
Louisiana	$87	$182	1,518
Maine	$42	$82	834
Maryland	$129	$250	1,758
Massachusetts	$193	$382	2,474
Michigan	$224	$482	4,051
Minnesota	$118	$251	1,957
Mississippi	$47	$94	872
Missouri	$127	$275	2,145
Montana	$39	$73	748
Nebraska	$48	$80	723
Nevada	$58	$109	801
New Hampshire	$39	$78	586
New Jersey	$254	$550	3,468
New Mexico	$37	$71	659
New York	$595	$1,075	7,049
North Carolina	$190	$391	3,665
North Dakota	$22	$38	307
Ohio	$254	$584	4,840
Oklahoma	$70	$150	1,424
Oregon	$117	$241	2,018
Pennsylvania	$330	$781	5,728
Rhode Island	$39	$71	539
South Carolina	$98	$214	2,016
South Dakota	$25	$42	416
Tennessee	$109	$246	2,035
Texas	$427	$1,068	8,210
Utah	$48	$112	1,012
Vermont	$21	$39	384
Virginia	$166	$345	2,645
Washington	$187	$408	3,010
West Virginia	$38	$73	627
Wisconsin	$173	$362	3,036
Wyoming	$17	$29	241
United States	$7,081	$23,944	199,830

Source: National Restaurant Association estimates, with economic and employment impact based on BEA multipliers

Note: State impact figures do not sum to the U.S. total, because they only include inputs within each state.